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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,321	10/06/2004	Mario Martin	A-9239	7540

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HOFFMAN WASSON & GITLER, P.C
CRYSTAL CENTER 2, SUITE 522
2461 SOUTH CLARK STREET
ARLINGTON, VA 22202-3843

EXAMINER

LOPEZ, CARLOS N

ART UNIT	PAPER NUMBER
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1791

MAIL DATE	DELIVERY MODE
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01/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/509,321	Applicant(s) MARTIN, MARIO	
	Examiner /Carlos Lopez/	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "a bottom" makes it unclear to which's structures bottom is being referred.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brackmann et al (US 4,953,570) in view of Beckh et al (US 5,119,938). Brackmann discloses a cigarette making hopper. The hopper comprises the claimed column 36 wherein a perforated plate deemed as element 32 is inclined towards a discharge duct as shown in figure 1 and detailed in Col. 5, lines 23ff. The separator/hopper is provided with an entry duct such as 114 and/or the duct formed by plate 32 and roller 34. The claimed feed pipe is deemed as the pipe shown in figure 1 providing the compressed air flowing through perforated plate 32. As for the upper mouth of the column, porous conveyor 38 is moved substantially transversely to the vertical axis of the column 36 as

shown in figure 1 and detailed in Col. 5, lines 27ff. Brackman is silent disclosing the use of a mesh material to form the conveyor 38.

However, the use of mesh material to convey tobacco is notoriously known in the art. As shown by Beckh, conveyors used in the transportation of tobacco use mesh material because it provides a porous material for which air can pass through; allowing increased air permeability so that the tobacco can adhere to the conveyor and allowed to be transported.

Thus, while Brackmann does not disclose the use of a mesh conveyor, it is obvious to a person of ordinary skill in the art at the time the invention was made that a person of ordinary skill may use other known conveyor material such as mesh material disclosed by Beckh.

Additionally, it has been held that "a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product of not innovation but of ordinary skill and common sense." KSR International Co. v. Teleflex Inc., 550 U.S. 820 USPQ2d 1385 (2007). In the instant case, applicant is using a conveyor material that is known to transport tobacco as shown by Beckh. Hence, the use of the mesh material to transport tobacco in Brackmann's device would be obvious to a person of ordinary skill.

As for claim 2, it would be inherent that a suction system would overlay the conveyor belt 38 in order provide the noted suction in Col. 5, lines 27ff.

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Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okumoto et al (US 4,607,645) in view of Beckh et al (US 5,119,938). Okumoto discloses a cigarette making hopper. The hopper comprises the claimed column 223 wherein a perforated plate deemed as element 215 is inclined towards a discharge duct 217 as shown in figure 2 and detailed in Col. 3, lines 35ff. The separator/hopper is provided with an entry duct defined by plate 215 and roller 212. The claimed feed pipe is deemed as the pipe 213 shown in figure 2 providing the compressed air flowing through perforated plate comprising the claimed air diffuser, deemed as element 214. As for the upper mouth of the column, porous conveyor 141 and '141 moves substantially transversely to the vertical axis of the column 223 as shown in figure 2 and detail in Col. 3, lines 40ff. Okumoto is silent disclosing the use of a mesh material to form the conveyor 38.

However, the use of mesh material to convey tobacco is notoriously known in the art. As shown by Beckh, conveyors used in the transportation of tobacco use mesh material because it provides a porous material for which air can pass through; allowing increased air permeability so that the tobacco can adhere to the conveyor and allowed to be transported.

Thus, while Okumoto does not disclose the use of a mesh conveyor, it is obvious to a person of ordinary skill in the art at the time the invention was made that a person of ordinary skill may use other known conveyor material such as mesh material disclosed by Beckh.

Additionally, it has been held that "a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product of not innovation but of ordinary skill and common sense." KSR International Co. v. Teleflex Inc., 550 U.S. 820 USPQ2d 1385 (2007). In the instant case, applicant is using a conveyor material that is known to transport tobacco as shown by Bech. Hence, the use of the mesh material to transport tobacco in Okumoto's device would be obvious to a person of ordinary skill.

As for claim 2, suction system 141 would overlying the conveyor belt 141 in order provide the above noted.

As for claim 3, the air diffuser is element 214 noted as a regulating plate to make uniform the air supplied to the perforated plate.

Response to Arguments

Applicant's arguments with respect to pending claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Carlos Lopez/ whose telephone number is 571.272.1193. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571.272.1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Carlos Lopez/
Primary Examiner
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